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JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States.

JOSEPH J. MARTIN, ALFRED M. FULLER AND THOMAS B. SCHRIVER, COPARTNERS, TRADING AS MARTIN, FULLER AND COMPANY,
Petitioners,

v.

THE STEAMSHIP "SOUTHWARK,"
Respondent.

Petition of Martin et al. for a Writ of Certiorari to issue to the Circuit Court of Appeals for the Third Circuit, in the above entitled action.

HORACE L. CHEYNEY,
JOHN FREDERICK LEWIS,
Of Counsel.

BOURSE BUILDING,
PHILADELPHIA.

JOSEPH J. MARTIN, ALFRED M. FULLER and THOMAS B. SCHRIVER, Copartners, trading under the firm name of MARTIN FULLER AND COMPANY	In the
v.	Supreme Court
	of the
Steamship "SOUTHWARK."	United States.

To the Honorable, the Justices of the Supreme Court of the United States:

Joseph J. Martin, Alfred M. Fuller and Thomas B. Schriver, copartners, trading as Martin, Fuller and Company, petition for a writ of *certiorari*, directed to the Circuit Court of Appeals for the Third Circuit, to bring before this honorable Court, the cause of Joseph J. Martin, Alfred M. Fuller and Thomas B. Schriver, copartners, trading as Martin Fuller and Company, libellants, *versus* the steamship "Southwark," respondent-appellee; being No. 8 of March Term, 1901, of said Court.

Your petitioners respectfully allege and verify:

1. That they are exporters of fresh meat, engaged in business in the City of Philadelphia, and on July 3, 1894, they shipped on board the steamship "Southwark" at Philadelphia, 961 quarters of fresh beef, for delivery to William D. Craven, their agent, at Liverpool.

2. The steamship "Southwark" was engaged in the business of carrying fresh meat regularly, and was equipped with refrigerating apparatus for the purpose of creating and maintaining a low temperature (of 30 degrees or less) in the compartments where the meat was stowed.

3. A bill of lading for the meat was issued on behalf of said steamship, acknowledging its receipt in "apparent good order and condition."

The bill of lading gave the carrier the benefit of the "Harter Act," a clause therein reading as follows:

> "It is mutally agreed that this shipment is subject to all the terms and provisions of and all exemptions from liability, contained in the Act of Congress of the United States, approved on the thirteenth day of February, 1893."

4. There was printed on the face of this bill of lading a clause, commonly known as the "Dressed Meat Clause," as follows:

> "It is expressly agreed that the goods shipped hereunder are absolutely at the risk of the owners in every respect, and that the carrier is responsible for no loss, delay or damage thereto however arising, including stowage and all risks of breakdown or injury however caused, either to its refrigerator or its machinery, even though arising from defect existing at or previous to the commencement of the voyage; also that in case of the meat becoming, from any cause in the opinion of the master of the vessel, putrid, dangerous or offensive to the passengers or crew, it may be thrown overboard or otherwise disposed of, without liability to the carrier for consequent loss."

5. Upon the arrival of the steamship at Liverpool, a great quantity of the meat was spoiled, and thereupon suit was brought by the petitioners against the steamship "Southwark," to recover the sum of $6036, on the ground that at the time the meat was received and at the commencement of the voyage, the refrigerating machinery was out of order and working badly and that by reason thereof, the ship was not in fit condition either to receive the meat on board or to proceed upon the voyage.

This was denied in the answer, but it was admitted that "*at the beginning of the voyage*, through some cause not known to the respondent, but not connected with any defect in the machinery at the time of leaving the port, the refrigerator machinery broke down and had to be repaired."

6. The libel was dismissed in the District Court on the ground that although there is ordinarily a warranty of the fitness of the refrigerating machinery for the voyage, that there was no warranty of any kind in this case, by reason of the provisions of the "Dressed Meat Clause," and that (1) the ship was responsible only for negligence; and (2) that the burden was upon the petitioners to prove that the damage was caused by the negligence of the ship.

7. That notwithstanding the greater portion of the testimony was directed to the question of the fitness of the refrigerating apparatus at the beginning of the voyage, the opinion of the learned Judge of the District Court contains no discussion of the evidence upon that point, nor are there any findings of fact in either of the Courts below.

8. The learned judge of the District Court, in referring to the evidence upon this point, merely said (Record, p. 211):

> "I cannot discover sufficient evidence to satisfy my mind that the vessel was to blame for the accident."

9. The opinion of the Circuit Court of Appeals likewise contains no discussion of the evidence or finding of fact upon this most material point, it being merely stated therein that the opinion of the District Court "sufficiently states the facts and rightly rules the law."

10. The facts which were proved beyond contravention were briefly as follows:

(1) That the libellants were engaged in business at Philadelphia, as exporters of fresh meat.

(2) That the carriage of fresh meats upon trans-Atlantic steamships is now a common trade.

(3) That the steamship "Southwark" was regularly engaged in that trade, and was equipped with refrigerating machinery, intended to create and maintain a low temperature in the compartment where meat was stowed.

(4) That the libellants shipped at Philadelphia 961 quarters of fresh beef, upon the steamship, consigned to their agent at Liverpool.

(5) That to preserve the meats during the trip, a temperature of not higher than 30° must be maintained in the compartment where the meat is stowed.

(6) That this temperature is obtained by the circulation of chilled brine through pipes around the compartment.

(7) That the brine is chilled by the successive compression, condensation, and expansion of ammonia gas in its proximity, the ammonia during its expansion absorbing heat from the brine.

(8) That in order to maintain a temperature of 30° in the meat compartment, the circulating brine must of necessity be of much lower temperature and is usually not more than 15°.

(9) That the meat compartment on the "Southwark" had not been used on the in-bound voyage and it was therefore necessary to thoroughly chill it, before it was fit for the receipt of any meat.

(10) That it is customary, in summer weather, to start the refrigerating machinery from 48 to 72 hours *before* any meat is received.

(11) That with efficient refrigerating apparatus in operation for this time, a brine temperature of about 12° to 15°, and a correspondingly resulting temperature of about 22° degrees in the meat compartment will be obtained, and the walls of the latter will become thoroughly chilled.

(12) That during the time the meat compartment is open for receiving cargo there is usually an increase in the temperature of the air in the compartment from about 22° to 35°.

(13) That there is no increase in the temperature of the brine during that time. This is due to the fact that the brine retains cold for a long time and it is for that reason that it is employed as a refrigerating agent.

(14) That the doors of the compartment were closed at about midnight on July 3rd, and the steamship sailed the following morning about eleven o'clock.

(15) That with a proper brine temperature of not more than 15°, and with efficient machinery, the temperature in the compartment would have been reduced to 30° during the time which intervened after the doors were closed and before the ship sailed.

(16) That at the time the steamship sailed the temperature of the compartment was 42° instead of 30°.

(17) This excessively high temperature was due to the temperature of the brine, the "carrier of cold," which at that time was 40° instead of about 15°.

(18) That the uncontradicted evidence of five experienced witnesses is that these excessively high temperatures, as well as the pressures shown upon the engineer's log (record p. 106) demonstrate beyond question that the

refrigerating machinery was *not* in efficient working order and that it was *not* in fit condition to receive the cargo.

(19) That the ship sailed with these excessively high temperatures and pressures, indicating that the refrigerating apparatus was in such bad order that the meat could not be preserved during a mid-summer voyage.

(20) That the machinery was in operation a sufficient time before the compartment was opened to properly cool the compartment by reducing the brine temperature to 12° or 15°, if the machinery had been in efficient condition, and it was also in operation a sufficient time after the compartment was closed and before the ship sailed, to properly reduce the temperature of the air in the compartment, but notwithstanding machinery in efficient condition would have produced these results under similar conditions, the machinery upon the "Southwark," was unable to produce either of them.

(21) That about an hour after the ship sailed the machinery broke down and the next day there was another and more serious breakdown.

(22) That when the machinery broke down, a small refrigerating machine, used for cooling the ship's provision box, was connected with the meat compartment.

(23) This small provision machine while engaged in cooling both compartments not only maintained but actually *reduced* the temperature in the meat compartment, below the degree which the large machine had been able to obtain, when engaged in cooling the meat compartment alone.

(24) That repairs to the refrigerator machine were completed July 8th, and the ship reached Liverpool on July 14th.

(25) That at no time after the repairs were completed was the proper degree of temperature or brine contained.

For three days it remained stationary at 39, and it was then reduced as follows:—38°, 35°, 33°, and 32°. This latter was upon the last day of the voyage.

(26) That no proper inspection of the refrigerating machinery was made.

(27) That the only testimony as to an examination of the machinery is that of the superintendent of the repair shops of the International Navigation Company. He testifies that just before the ship sailed "I left the engine room, went around everything, boilers and engines, and came up on the top platform where the refrigerators are, went in and looked as I always did, and always do yet, I looked in there."

(28) That the witness did not make any inspection of the various pressures and temperatures, nor did he discover that the machinery was not working efficiently.

(29) That no explanation of these excessive temperatures has ever been given by the engineers of the vessel.

(30) That some of them ascribe the accidents to the machinery to the high temperature of the incoming water, but the chief engineer and refrigerating engineer deny this and say that they must have been due to some latent defect, but no such defect has even been shown.

That as to said decisions the petitioners submit as follows:

First.—It is submited that the finding of law of the learned Judge of the District Court, and which was adopted by the Circuit Court of Appeals, that the "Dressed Meat Clause" in the bill of lading entirely abrogated all warranty of the fitness of the refrigerating machinery is directly opposed to provisions of the Act of Congress of February, 1893 (the Harter Act), which provides in express terms that it shall not be lawful to

insert in any bill of lading any agreement whereby the obligations of the owner of a vessel "to exercise due diligence to properly equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage * * * shall be in any wise lessened, weakened or avoided," and "that if the owner of a vessel *shall exercise due diligence* to make said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, her owner or owners, charterer, agent or master shall be held liable for losses arising from faults or errors in navigation or in the management of said vessel. * * *"

Second.—That these decisions holding that there was no warranty to exercise even due diligence to make the refrigerating machinery fit for the voyage, is opposed to the uniform decisions of this Court construing the Harter Act.

Third.—That the decision of the District Court, adopted by the Circuit Court of Appeals, holding that the burden was upon the petitioners to prove the negligence of the respondent is opposed to the uniform decisions of this Court upon the subject.

Fourth.—That the decision of the District Court adopted by the Circuit Court of Appeals, as to the character of inspection necessary or the degree of due diligence required, is opposed to the decisions of this honorable Court and to the uniformly established law upon the subject.

Wherefore the petitioners, believing that injustice would be done to them if the said decree should stand, pray that a writ of *certiorari* may issue to the Circuit Court of Appeals for the Third Circuit, directing that this cause be certified to this, the Supreme Court of the United States, for its review and determination.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA. } *ss.*

being duly affirmed says that the facts contained in the foregoing petition that they are true to the best of his knowledge, information and belief.

Affirmed and subscribed before me this day of March, A. D. 1901.

We, JOHN F. LEWIS and HORACE L. CHEYNEY, duly admitted to practice in the Supreme Court of the United States, hereby certifty that we have examined the foregoing petition for a writ of *certiorari*, and in our judgment, from the matters stated therein the writ ought to issue.